

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In re: Vicky Rodríguez-Torres  
Debtor

\_\_\_\_\_  
Vicky Rodríguez-Torres  
Plaintiff

v.

Enid López-López  
Guillermo Camba-Casas  
Mariela Rexach-Rexach  
Government Development Bank PR, et al.  
Defendants

09-10864-BKT7  
Chapter 7

ADVERSARY PROCEEDING  
10-00137-BKT

18 U.S.C. § 1030,  
18 U.S.C. § 2510,  
18 U.S.C. § 2701,  
42 U.S.C. § 1983,  
42 U.S.C. § 1985,  
42 U.S.C. § 1988,  
TORTS

RULE 9023 MOTION TO VACATE ORDER, RE: ECF NO. 82  
GRANTING DEFENDANTS' (GDB) [80]  
MOTION FOR EMERGENCY PAYMENT OF ATTORNEYS' FEES

TO THE HONORABLE COURT:

Now comes Plaintiff, through the undersigned attorney, and respectfully alleges and prays as follows:

1. On September 21<sup>st</sup>, 2010, GDB filed a motion to dismiss the instant adversary proceeding (**ECF No. 11**). Said motion included within the same paper a prayer for relief in the form of **Fed. R. Bankr. P. 9011** sanctions, requesting that Plaintiff "*reimburse defendants for the unreasonable costs incurred*".
2. On January 28<sup>th</sup>, 2011 the Court granted Defendant's motion to dismiss in both respects, dismissing the adversary proceeding as well as imposing fees and expenses on Plaintiff (**ECF No. 66**).

3. On February 1<sup>st</sup>, 2011, Debtor filed a notice of appeal seeking review by the District Court of such dismissal (**ECF No. 68**).
4. On March 31<sup>st</sup>, 2011, GDB filed an urgent motion requesting that Plaintiff be ordered to pay the above fees and expenses in an expedited manner (**ECF No. 80**).
5. On March 25<sup>th</sup>, 2011, notwithstanding the above pending review before the District Court, this Bankruptcy Court entered order granting Defendants' motion for attorney's fees and expenses (**ECF No. 77**). Then on April 4<sup>th</sup>, 2011, this Court entered order granting Defendants' motion for an expedited payment of said fees and expenses (**ECF No. 82**).
6. In issuing both **ECF No. 77** and **ECF No. 82**, Plaintiff submits that this Court acted improvidently, based on the following grounds:
  - a. GDB did not meet the requirement that the request for sanctions be made in a separate paper;
  - b. GDB did not meet the twenty-one (21) day safe-harbor requirement of serving the paper pursuant to **Fed. R. Bankr. P. 7004** before filing it with the Court;
  - c. **Fed. R. Bankr. P. 9011** provides for the reimbursement of only "*reasonable expenses and attorney's fees incurred*", which excludes any reimbursement of "*unreasonable costs*" as prayed for by GDB;
  - d. Alternatively, had the Court been acting on its own initiative, it failed to:

- i. describe the specific violative conduct;
- ii. enter an order directing Plaintiff to show cause as to why she had not incurred in such violative conduct;
- e. The sanction is excessive, and extends beyond the limitation that it be sufficient to deter repetition of the imputed conduct;
- f. Fed. R. Bankr. P. 7062 required this Court to stay the effect of its order until fourteen (14) days had passed after its entry;
- g. Plaintiff's filing of a notice of appeal was an act of jurisdictional significance which divested this Court of jurisdiction over the subject matter of the order on appeal, which included the imposition of fees and expenses.

WHEREBY, for all of the above, Debtor prays this Honorable Court:

VACATE its ORDER as set forth in **ECF No. 82**.

**Submitted in New York, New York, this 11<sup>th</sup> day of April, 2011.**

**S/William E. Meléndez Menéndez**  
**William E. Meléndez Menéndez**  
USDC PR No. 226902

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties in interest.

In New York, New York, this 11<sup>th</sup> day of April, 2011.

**S/William E. Meléndez Menéndez**

**William E. Meléndez Menéndez**

USDC PR No. 226902